

BEFORE **THE** STATE BOARD OF EQUALIZATION
OF **THE** STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES A. MACDONALD)

Appearances:

For Appellant: James A. MacDonald, in pro. per.

For Respondent: James T. **Philbin**
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James A. MacDonald against a proposed assessment of additional personal income tax in the amount of \$55.00 for the year 1972.

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The question presented is whether respondent Franchise Tax Board properly disallowed appellant's claimed head of household status for 1972 on the basis of a **federal** audit report.

During 1972 appellant was single and lived with his mother in Santa Monica, California. Although he allegedly paid over one-half the cost of **their** food, utilities, and other household necessities in that **year**, he did not claim his mother as a dependent on either his federal or state income tax return for 1972. His stated reason for not doing so was that his mother also had filed 11972 tax returns in which she claimed her own personal exemption. Appellant reported gross income of **\$8,178.20** for 1972 and computed his tax liability using head of household rates. The resulting California personal income tax was \$63.00, and appellant claimed a refund of **the** amount by which his California withholding exceeded \$63.00. Respondent made the refund claimed on February 1, 1973.

In 1974 respondent received a federal audit change report indicating that appellant's claimed head of household status for 1972 had been disallowed. On the basis of that federal action, respondent issued a proposed assessment of additional California personal income tax. Appellant protested the deficiency assessment and advised respondent that he was still negotiating with the Internal Revenue Service regarding its audit change for 1972.

In **June, 1975**, appellant filed an amended California return showing that in his initial 1972 return he had overstated his gross income by **\$1,000.00**; he reported a corrected gross income figure for 1972 of **\$7,178.20**. In this amended return he used the single taxpayer rates to compute his tax liability. Thereafter respondent received a revised federal audit report which confirmed the **\$1,000.00** reduction in appellant's reported gross income for 1972 and his single taxpayer status for that year. Respondent adjusted its proposed assessment downward in accordance with this final federal determination and the remaining assessment reflects only the disallowance of appellant's claimed head of household status.

Appellant's sole contention is that he was entitled to head of household status because he provided more than one-half of his mother's support during 1972.

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He contends this made her a qualified dependent even though he did not claim her as such on his returns. He states that he agreed to the Internal Revenue Service's disallowance of his head of household status in return for that agency's recognition of the **\$1,000.00** reduction in his income for that year.

Respondent relies upon the presumption of correctness which attaches to a California personal income tax assessment based upon a federal audit report. Respondent also states that appellant could have provided over half the support of his mother in 1972 and still not be entitled to head of household status. Its reasoning in this regard is as follows: (1) In order to qualify for head of household status, appellant must have been entitled to claim his mother as a dependent (Rev. & Tax. Code, § 17042, subd. (b)); (2) for appellant's mother to have qualified as a dependent, she must have had gross income in 1972 of less than \$750.00 (Rev. & Tax. Code, § 17054, subd. (c)(1)); (3) if appellant's mother was required to file a California personal income tax return for 1972, she must have had an adjusted gross income of at least **\$3,250.00** or a gross income of over **\$7,000.00** in that year (Rev. & Tax. Code, § 18401, subds. (a) and (c)); (4) if she had that much income in 1972, she did not qualify as a dependent of appellant and appellant was therefore not entitled to head of household status in that year.

As respondent has pointed out, a deficiency assessment based upon a federal audit report is **presumptively** correct, and the taxpayer bears the burden of proving it erroneous. (Appeal of Loren and Lilly Ann Rothstein, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal Feb. . . . 17, 1959.) In the instant case although appellant has **alleged** that his acquiescence in the federal disallowance of his head of household status was in the nature of a settlement, he has failed to offer any evidence tending to show that he was entitled to that filing status. Other than his own self-serving statements, appellant has offered no proof that he provided more than one-half of his mother's support in 1972. Furthermore, he has failed to furnish any information regarding either the sources of or the size of his mother's income in that year. Since we do know that she filed her own individual tax returns for 1972, presumably because she was required to do **so**, we share

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respondent's doubts as to whether appellant's mother qualified as a dependent who would have entitled appellant to head of household status, even if he had established that he provided over half her support in 1972.

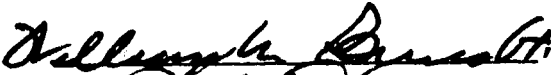

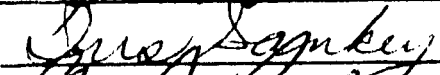

On the basis. **of** the evidence before us we must conclude that appellant has not carried his burden of proving error in the federal determination or in the corresponding deficiency assessment which is the subject of this appeal. Respondent's action in this matter must, therefore, be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good Cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, **that the action of the Franchise Tax Board** on the protest of James A. MacDonald against a proposed assessment of additional personal income tax in the amount of \$55.00 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of June , 1977, by the State Board of Equalization.

 Chairman
 , Member
 , Member
 , Member
_____, Member